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Notice of Allowability	Application No.	Applicant(s)	
	10/798,590	WANG ET AL.	
	Examiner	Art Unit	
	Jessica L. Rossi	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amd. 9/27/06.
2. ☒ The allowed claim(s) is/are 2-16 and 18-22.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
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DETAILED ACTION

1.131 Declaration

1. The declaration filed on 9/27/06 under 37 CFR 1.131 has been considered but is ineffective to overcome the Hornung et al. (US 2004/0074588) reference.
2. While the evidence submitted is sufficient to establish a conception of the invention prior to the effective date of the Hornung reference, the evidence submitted is still insufficient to establish diligence from a date prior to the date of reduction to practice of the Hornung reference to either a constructive reduction to practice or an actual reduction to practice.

The MPEP states that the critical period for diligence for a first conceiver but second reducer (allegedly Applicant) begins not at the time of conception of the first conceiver but just prior to the entry in the field of the party who was the first to reduce to practice (Hornung) and continues until the first conceiver reduces to practice (MPEP 2138.06, "Reasonable Diligence [R-1]"). The MPEP also states that an Applicant must account for the entire period during which diligence is required (MPEP 2138.06, "Reasonable Diligence [R-1]"). The MPEP also states that it is not enough to merely allege that the acts referred to occurred prior to a specific date and that Applicant must provide actual dates of acts relied on to establish diligence (MPEP 715.07, part II, "Establishment of Dates"). Because Applicant has failed to satisfy any of these requirements, diligence has not been established.

Claim Rejections

3. The rejection of claim 12 under 35 USC 102(a) as being anticipated by Reid et al., as set forth in paragraph 11 of the previous action, has been withdrawn in light of Applicant's arguments presented on 8 of the remarks.

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4. The rejection of claim 12 under 35 USC 103(a) as being unpatentable over Hornung et al. in view of Reid et al., as set forth in paragraph 16 of the previous action, has been withdrawn in light of Applicant's arguments presented in the last paragraph on p. 10 through the first paragraph on p. 11 of the remarks.

5. The rejection of claim 12 as being unpatentable over Hornung et al. and Virnelson, or alternatively, Virnelson and Hornung et al. and further in view of Wey et al., as set forth in paragraph 21 of the previous action, has been withdrawn in light of Applicant's arguments presented on p. 12-13 of the remarks.

6. The rejection of claim 12 as being unpatentable over Hornung et al. in view of Wey et al. and Virnelson et al., or alternatively, Wey et al. in view of Hornung et al. and Virnelson et al., as set forth in paragraph 23 of the previous action, has been withdrawn in light of Applicant's arguments presented on p. 14-16 of the remarks.

EXAMINER'S AMENDMENT

7. This application is in condition for allowance except for the presence of claims 23-30 directed to an invention non-elected without traverse. Accordingly, claims 23-30 have been cancelled. The application has been amended as follows:

Claims 23-30: cancelled.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Rossi whose telephone number is 571-272-1223. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JESSICA ROSSI
PRIMARY EXAMINER

